

VOLUME 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,)	
)	
Plaintiff,)	NO. C-20-5640 YGR
)	
vs.)	Monday, May 3, 2021
)	
APPLE, INC.,)	Oakland, California
)	
Defendant.)	BENCH TRIAL
)	
APPLE, INC.,)	
)	
Counterclaimant,)	
vs.)	
)	
EPIC GAMES, Inc.,)	
)	
Counter-Defendant.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:	CRAVATH, SWAINE & MOORE, LLP
	825 Eighth Avenue
	New York, New York 10019
BY:	KATHERINE B. FORREST, ESQUIRE
	GARY A. BORNSTEIN, ESQUIRE
	YONATAN EVEN, ESQUIRE

(Appearances continued.)

Reported By:	Diane E. Skillman, CSR 4909, RPR, FCRR
	Official Court Reporter

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

OPENING STATEMENT - DUNN

1 the purchase price. No other transaction fee in any industry
2 comes close.

3 But that is not true either.

4 Given Epic's attacks, especially this morning, it may
5 surprise people to learn that Apple did not establish the
6 30 percent. It was Steam, another game platform, that set the
7 30 percent way back in 2003. And by the time that Apple
8 entered the market with the App Store in 2008, 30 percent was,
9 as Epic's internal documents will show, industry standard.

10 Epic just showed us a clip of Eddy Cue, but even in that
11 clip that Epic chose to show Eddy says that Apple was
12 following the market.

13 And just as those competitors who came before Apple
14 charged 30 percent, so did the ones who entered the market
15 after Apple. And this includes the Google Play Store, the
16 Samsung Galaxy store, Microsoft, HP, Amazon. This is the kind
17 of market entry that is the hallmark of competition.

18 Now, 30 percent was also substantially less than the
19 typical publisher royalty at the time. Developers used to pay
20 70 percent, not 30 percent, and that was for shrink-wrap boxes
21 that sat on actual shelves. And when Mr. Sweeney distributed
22 third-party games in the 1990's, he charged 60 percent, and
23 he's described in this litigation as a fair royalty.

24 So today in the App Store, 84 percent of apps are free.
25 It is true that we love free apps. And so for 84 percent of

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,)	
)	
Plaintiff,)	NO. C-20-5640 YGR
)	
vs.)	Wednesday, May 5, 2021
)	
APPLE, INC.,)	Oakland, California
)	
Defendant.)	BENCH TRIAL
)	
APPLE, INC.,)	
)	
Counterclaimant,)	
vs.)	
)	
EPIC GAMES, Inc.,)	
)	
Counter-Defendant.)	
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	Official Court Reporter

1 **A.** The Xbox console does not have touch controls.

2 **Q.** How do you control the games?

3 **A.** Through a controller.

4 **Q.** Can the Xbox console connect to the internet?

5 **A.** Yes.

6 **Q.** How?

7 **A.** Over ethernet or WiFi.

8 **Q.** Does it have a cellular chip?

9 **A.** It does not.

10 **Q.** Would it be possible for a user to play the Xbox console
11 without owning other equipment such as a TV, speakers,
12 ethernet connection?

13 **A.** No.

14 **Q.** What products, if any, compete with the Xbox console for
15 hardware sales?

16 **A.** The most direct competitor for hardware sales would be the
17 Sony PlayStation.

18 **Q.** Are there any others?

19 **A.** There is the Nintendo Switch but to a much lesser extent.

20 **Q.** Any others?

21 **A.** No.

22 **Q.** Okay. What about the iPhone?

23 **A.** The iPhone as a competition?

24 **Q.** Yes.

25 **A.** We certainly don't view iPhone as a competing device.

1 Q. What about the iPad?

2 A. We do not view the iPad as a competing device.

3 Q. In your role in business development at Xbox, do you try
4 to convince users to buy an Xbox console rather than an
5 iPhone?

6 A. No.

7 Q. Why not?

8 A. Because we view the opportunity for gamers to -- they make
9 a choice to have the game experience with a console or they
10 play on a PC. Sometimes that's an "and." And they also want
11 to play on mobile devices. So they are additives. They are
12 not replacements.

13 Q. That was going to be my next question. Do you view the
14 Xbox console as a replacement or substitute for the iPhone?

15 A. No. I'm not aware of.

16 Q. Do you view the Xbox console as a replacement or
17 substitute for the iPad?

18 A. No.

19 Q. Based on your experience, do Xbox users also have
20 smartphones?

21 A. Yes.

22 Q. So let's talk about the games available to play on Xbox.

23 First of all, does a video game have to be programmed
24 specifically for the Xbox for the Xbox console to be able to
25 run it?

1 Q. And iOS is listed there?

2 A. It is not.

3 Q. Okay. Just look, if you can, through all the games listed
4 on this chart and tell me if you see iOS listed for any of
5 them.

6 A. I do not.

7 Q. If you turn to the page 2476.6. Do you see this chart
8 "Titled High Profile Competitive Console Exclusives"?

9 A. I do.

10 Q. Which video game platforms are listed on this slide?

11 A. PlayStation and Nintendo Switch and then competitive
12 stores, which would be PC stores.

13 Q. Such as the Epic Games Store and Google?

14 A. Epic Games or Stadia. I only see Epic and Stadia here.
15 Yes. Epic and Stadia.

16 Q. Is IOS listed anywhere on this page?

17 A. It is not.

18 Q. You can put that away.

19 So let's focus on where consumers can buy Xbox games.
20 Where can a consumer buy a video game to run on an Xbox
21 console?

22 A. On an Xbox console, you can buy a disk from a retailer, so
23 you can go out to Wal-Mart, Best Buy, by a physical disk that
24 can run, or you can -- from the Xbox console, there is the
25 Xbox Store where you can sign up to the Game Pass subscription

1 to get access to a broad set of titles, a hundred-plus titles,
2 or you can download any of those individual titles to be
3 played on the Xbox.

4 **Q.** Okay. So let's focus on the Xbox Store. Can you explain
5 in just a bit more detail what is the Xbox Store?

6 **A.** The Xbox Store is a curate store for the Xbox console that
7 gives you the option to see the titles, buy the titles, or
8 sign up to a subscription, as well as, you know, get other --
9 I guess not in the stores, so I'll leave it at that.

10 **Q.** How can a user access the Xbox Store?

11 **A.** You access the Xbox Store through -- if we're speaking
12 purely on console, you access the Xbox Store -- it's part of
13 the integrated experience, so when you go in to load up
14 your -- your Xbox, you see your community, you see your store,
15 you see the games you may already own.

16 **Q.** And who shops at the Xbox Store?

17 **A.** People who own an Xbox.

18 **Q.** Does the Xbox Store offer games that can be run on any
19 platform other than the Xbox?

20 **A.** In the Xbox Store for console, no, not that I'm aware of.

21 **Q.** Can a user buy a game from the Xbox Store and based on
22 that purchase, run that game natively on the iPhone?

23 **A.** No.

24 **Q.** Could the user go to the iPhone and purchase a game and
25 based on that purchase, run it natively on an Xbox console?

1 **A.** No.

2 **Q.** Does the Xbox Store compete for transactions with the
3 Apple App Store?

4 **A.** No.

5 **Q.** In your role in business development at Xbox, do you have
6 a preference for whether a potential user buys a game on iOS,
7 or are you agnostic as to whether that user buys a game on
8 iOS?

9 **A.** I -- given that they're not many at all of our games that
10 run on iOS that are competing games, then we don't -- we're
11 agnostic. If you want to buy a game on iOS, wonderful.

12 **Q.** And how does that compare to whether a user buys a game on
13 the PlayStation?

14 **A.** I think if you've made a choice to buy a game on -- if you
15 made a choice to buy a PlayStation, then you're buying games
16 from Sony. That is taking away from you being an owner of an
17 Xbox for the most part and buying games through the Xbox
18 Store.

19 **Q.** And that's different from iOS?

20 **A.** It is. Sony is our direct competitor.

21 **THE COURT:** I want to remind you again, open-ended
22 questions.

23 **MR. EARNHARDT:** Okay. Thank you, Your Honor.

24 **Q.** Are there some specific games that are available on both
25 the Xbox system and iOS in different forms? The same game

1 their Xbox console or their friend's Xbox console, make the
2 purchase for the item in the game that they were playing,
3 power down the Xbox, go back to the other device, and then
4 play the game with the item they just purchased. Do you
5 factor that in?

6 **A.** No. That's a very unlikely scenario.

7 **Q.** Switching topics a bit.

8 For apps purchased through the Xbox Store, games purchased
9 through the Xbox Store, does Microsoft charge developers a
10 commission?

11 **A.** Yes.

12 **Q.** And what is Microsoft's standard commission on the Xbox
13 Store?

14 **A.** Our published commission is 30 percent.

15 **Q.** Does Microsoft capture a meaningful share of the revenue
16 anywhere else in the Xbox ecosystem?

17 **A.** I'm not sure I understand the question.

18 **THE COURT:** Me either.

19 **BY MR. EARNHARDT:**

20 **Q.** Let me clarify.

21 **THE COURT:** Ask open-ended questions and then I can
22 get an answer. Go ahead.

23 **BY MR. EARNHARDT:**

24 **Q.** Does Microsoft -- how much margin does Microsoft earn on
25 the sale of the Xbox consoles?

1 **A.** We don't. We sell the consoles at a loss. We subsidize
2 every console.

3 **Q.** If Microsoft sells hardware consoles at a loss, why does
4 Microsoft keep selling them?

5 **A.** Because our business model is set up so that we can
6 deliver an end-to-end gaming experience. The hardware is
7 critical to us delivering that gaming experience, and
8 therefore we know we need to -- for gamers to be able to have
9 a console. And we subsidize that and then we make money over
10 the long run on the game sales or the game subscriptions.

11 **Q.** Just to be clear, does Microsoft ever earn a profit on the
12 sale of an Xbox console.

13 **A.** No.

14 **Q.** How does that compare to whether Apple earns a profit on
15 the sale of an iPhone?

16 **MR. SRINIVASAN:** Objection. Foundation.

17 **THE COURT:** Sustained.

18 **BY MR. EARNHARDT:**

19 **Q.** How does the fact that you testified to, that Microsoft
20 loses money on the sale of its consoles, relate to the 30
21 percent commission that Microsoft charges in the Xbox Store?

22 **A.** Our business model is such that we subsidize the console.
23 We charge a 30 percent commission for the games to be able to
24 run in that community so that the players can access the
25 games, and in the long run, that pays for the console.

1 **Q.** If Microsoft did not charge a commission on the Xbox
2 Store, would it make money or lose money in its Xbox business?

3 **A.** We would lose money. It would -- yeah. It would be an
4 unprofitable business.

5 **Q.** Now, Microsoft also runs something called the Windows
6 Store on PC; correct?

7 **A.** That's correct.

8 **Q.** What is the Windows Store on PC?

9 **A.** It is a Windows Store that runs on PC that is -- has
10 applications and games and other things that you might expect
11 in a PC store.

12 **Q.** So what sort of apps does Microsoft sell on the Windows
13 Store?

14 **A.** All sorts of apps. We have productivity apps, we have
15 game apps, we have, you know, other media and entertainment
16 apps for download, so a variety.

17 **Q.** What is the current commission that Microsoft charges on
18 the Windows Store?

19 **A.** The commission has been 30 percent on the Windows Store.
20 We just announced reducing that to 12 percent.

21 **Q.** And when will that become effective?

22 **A.** August, I believe.

23 **Q.** And why is Microsoft changing the commission it charges on
24 the Windows Store?

25 **A.** There are multiple stores that compete on Windows. There

1 custom-built, end-to-end hardware-to-software experience. The
2 Windows world is, you know, an open platform with lots of
3 different scenarios that people use these devices for with
4 the, you know, open browser where you can go access anything
5 that you may want, download it onto the device or use
6 alternative stores beyond Microsoft's.

7 **Q.** Have you heard the terms "special purpose platform" and
8 "general purpose platform"?

9 **A.** I've heard those. I think the deposition was one of the
10 times that I first heard them.

11 **Q.** Do you have an understanding of what those terms mean?

12 **A.** Sure.

13 **Q.** Which is the Xbox ecosystem, special purpose or general
14 purpose?

15 **A.** Special purpose.

16 **Q.** Which is the Windows ecosystem, special purpose or general
17 purpose?

18 **A.** General purpose.

19 **Q.** Now, you testified --

20 **THE COURT:** What are they? What is your
21 understanding? It's not really relevant if I don't understand
22 your understanding.

23 **THE WITNESS:** Sure.

24 So a special purpose platform is where you are basically
25 building a hardware, a piece of hardware to do a specific

1 thing, right, just like you would, I guess, in the Apple
2 scenario, you would talk about the iPod was designed to play
3 music. That was really what it did.

4 The Xbox is designed to give you a gaming experience.
5 People buy an Xbox because they want to play games.

6 **THE COURT:** So does it have to be just one thing?

7 **THE WITNESS:** Typically. I think so. It's like
8 serving a special -- a very targeted, special intent.

9 **THE COURT:** Okay. So anything beyond one is general?

10 **THE WITNESS:** I think -- I can't think of an example
11 not, but I think if it's a genre, games, music, you know,
12 things that you're like I'm buying this to do this particular,
13 like, very targeted theme, that's how I -- that would be my
14 definition of "special purpose."

15 **THE COURT:** And then how would you define "general"?

16 **THE WITNESS:** General is where you're buying
17 something because it can do a wide variety of things and that
18 changes every day. As new ideas are getting created, new
19 types of use cases are happening, you know, a new type of
20 technology gets invented, you can go and now expand to that
21 general purpose platform to go into that thing, so I think a
22 general purpose in the sense of like it can do a bunch of
23 things already, and it has the aperture to do a bunch more
24 things.

25 **THE COURT:** Okay. Thank you.

1 like -- I'm -- sustained. Just because something is in the
2 press doesn't make it true.

3 **THE WITNESS:** I think it's part of their financial
4 reporting.

5 **THE COURT:** Okay.

6 **MR. EARNHARDT:** Okay. I'll move on, Your Honor.

7 **Q.** Let me show you another document. If you could look at
8 your binder. Actually -- look at your binder. Turn to tab
9 DX5523.

10 **THE COURT:** And to the point, if you want to show her
11 a financial statement, that's -- that is admissible evidence.

12 **MR. EARNHARDT:** Yeah, of course, Your Honor. We can
13 do that with a different witness.

14 **Q.** This is another document that has redactions so we will go
15 very slowly, and I will be careful not to ask inappropriate
16 questions, and don't volunteer information that you see
17 because it may be redacted.

18 **A.** Okay.

19 **Q.** My first question is do you recognize this document?

20 **A.** I do.

21 **Q.** What is it?

22 **A.** It is a report that is built by our Business Planning and
23 Strategy Team, and it does a market look at where profits come
24 from in the game industry.

25 **Q.** And did you receive this document in the ordinary course

1 of business?

2 **A.** I did.

3 **MR. EARNHARDT:** Move to admit DX5523, Your Honor.

4 **THE COURT:** Any objection?

5 **MR. SRINIVASAN:** No objection, Your Honor.

6 **THE COURT:** Admitted.

7 (Defendant's Exhibit 5523 received in evidence)

8 **BY MR. EARNHARDT:**

9 **Q.** If you could turn to slide 31. This is a circumstance in
10 which we are going to be very careful.

11 **A.** Okay.

12 **Q.** So don't say any numbers.

13 At a very, very high level, what does this slide show?

14 **A.** The profit breakdown on consoles.

15 **Q.** And, again -- well, do you see section 7 near the bottom
16 that says "total hardware"?

17 **A.** I do.

18 **Q.** And, again, I don't want you to say it out loud, but do
19 you see the number that has been blotted out on the screen but
20 is clear in your book next to Microsoft under the margin
21 percentage?

22 **A.** I do.

23 **Q.** And does that number state the Xbox console operating
24 margin as of 2019?

25 **A.** It does.

1 Exhibit PX2311 in your binder. If you can just take a minute
2 to flip through that, and let me know when you have had a
3 chance to familiarize yourself with it. You may want to stop
4 at the back and move forward because that's how it happens
5 chronologically.

6 **A.** I see, 2311.1. That one?

7 **Q.** It starts at 2311.1 and then it has several pages behind
8 it.

9 **A.** Right.

10 **Q.** Do you recognize that document?

11 **A.** Yes, I do.

12 **Q.** What is it?

13 **A.** It is on the first page -- it's an email correspondence
14 between myself and the Developer Relations Team at Apple.

15 **Q.** And the date at the top is April 3rd, 2020?

16 **A.** That's correct.

17 **MR. EARNHARDT:** Your Honor, I would move PX2311 into
18 evidence.

19 **THE COURT:** Any objection?

20 **MR. SRINIVASAN:** No objection, Your Honor.

21 **THE COURT:** Admitted.

22 (Plaintiff's Exhibit 2311 received in evidence)

23 **BY MR. EARNHARDT:**

24 **Q.** If you could turn to the bottom of page PX2311.10.

25 **A.** I have 2311.1. Is that it?

1 being able to deliver the application into TestFlight and the
2 excitement in the market from that.

3 Q. And then if you turn back to PX2311.10.

4 A. Uh-huh.

5 Q. Do you see the response from Trystan at Apple?

6 A. I do.

7 Q. Who is Trystan?

8 A. Trystan is one of the senior leaders in the Publisher
9 Relations Team.

10 Q. And --

11 A. Or the Dev Relations Team, I should say.

12 Q. And in the second paragraph you see that Trystan -- what
13 does Trystan tell you in the second paragraph of his email?

14 A. So Trystan effectively tells me in this the same thing,
15 that even though it's in TestFlight, it's not compliant and
16 that we need to find a way to break out every game, and we
17 cannot have a catalog of games.

18 Q. You can put that aside.

19 **THE COURT:** Can you explain to me, Ms. Wright, on
20 your email, the paragraph that he was referencing, so at .11,
21 the second paragraph when you reference "Shadows, PC games,
22 streaming service, and Netflix is interactive," what were you
23 trying to communicate there?

24 **THE WITNESS:** We were showing them two examples where
25 games that were allowed -- where either a game, or in

1 Netflix's case, another application, was able to exist, and we
2 didn't understand why we couldn't. And I believe they ended
3 up pulling Shadow out of the App Store based off this email
4 that we sent until they could make some changes. And that was
5 not our intention of course. It was a byproduct of us
6 pointing to other examples.

7 **THE COURT:** And Netflix's interactive content, is
8 that -- what were you referring to there?

9 **THE WITNESS:** So you know how in Netflix, if you have
10 Netflix on your phone or Netflix on your TV, you sign in and
11 you see all your movies and all your TV shows?

12 **THE COURT:** Right.

13 **THE WITNESS:** Game Pass is exactly the same thing.
14 It's a single application just like Netflix where you see all
15 your different game titles and you can play them without
16 downloading them onto your device.

17 **THE COURT:** Okay. Thank you.

18 **BY MR. EARNHARDT:**

19 **Q.** Are there movies on Netflix where you can choose your own
20 adventure?

21 **A.** No.

22 **Q.** Are there movies -- well, have you seen --

23 **A.** I'm sorry. I know what you mean.

24 **Q.** Have you seen movies on Netflix where the user gets to
25 choose which way the story goes?

1 **A.** Yeah. I think that does exist. I think it's a smaller
2 part of Netflix service.

3 **Q.** You mentioned that xCloud is currently available on iOS in
4 beta?

5 **A.** It is.

6 **Q.** Through what mechanism again?

7 **A.** It is available to iOS customers who choose to access it
8 over the browser that's on the phone.

9 **Q.** How does streaming xCloud through a web browser compare to
10 streaming xCloud through a native app?

11 **A.** A web browser is a much more challenged experience, both
12 to build and to maintain than a native app, and it also lacks
13 much of the functionality and benefits that you get through a
14 native app.

15 **Q.** Could you give me some examples?

16 **A.** So first on browser, on iOS -- and iOS is the only place
17 I'm aware of this where you have to use their engine, Apple's
18 engine called WebKit so no matter what browser you're using,
19 you're using the WebKit engine provided that, you know, is
20 Apple's engine and most frequently used on the iPhone.

21 I think the data I've seen from the industry leading
22 source on this is three quarters of users are using Safari on
23 mobile devices with WebKit.

24 WebKit, I think, is well-understood to be lacking in some
25 of the features behind other browsers, but because on mobile

1 about earlier, that, you know, mobile operates differently
2 today, but it's a vast part of the overall gaming industry
3 that has to be considered in any industry analysis.

4 **Q.** Okay. Thank you.

5 And I wanted to introduce a document. Your Honor, this
6 is --

7 **THE COURT:** You need to stay by the mic, sir.

8 **MR. SRINIVASAN:** Yes. Sorry, Your Honor.

9 Your Honor, this is an exhibit that has not yet been
10 marked. And do we have a sticker?

11 **THE COURT:** Okay. I think -- well, I don't know what
12 the last in order is off the top of my head. Hold on.

13 **MR. SRINIVASAN:** I understand, Your Honor. And we
14 can get the number.

15 There was a stipulation that Microsoft provided to
16 authenticate and establish business record foundation that was
17 submitted and that this is part of that submission. I
18 apologize that we don't have the number, but this is a
19 reaction to what happened in direct examination.

20 **THE COURT:** I'm looking at 5536 is next in order.

21 **MR. SRINIVASAN:** Actually, I misspoke, Your Honor. I
22 understand that this is actually 5363. It has been marked as
23 an exhibit. I just don't have a sticker on it.

24 **THE COURT:** That's fine. If you will hand it to
25 Ms. Stone. 5363?

1 **MR. SRINIVASAN:** And just for the record -- I
2 apologize. The number is 5363, and the reason it is not
3 stamped, I am told, is that it's -- it came in as a native
4 document.

5 **THE COURT:** Okay.

6 **MR. SRINIVASAN:** May I approach, Your Honor?

7 **THE COURT:** You may. Proceed.

8 **BY MR. SRINIVASAN:**

9 **Q.** Ms. Wright, have you had a chance to look at Exhibit 5336?

10 **A.** No. I'm sorry. Where would I even find 5363?

11 **MR. EARNHARDT:** Your Honor, counsel doesn't have a
12 copy for me. Can you give me one second to try to see if we
13 have one?

14 **MR. SRINIVASAN:** It's on the exhibit list,
15 Your Honor. And I apologize for this, Your Honor. This came
16 up as a result of her direct examination. We made as many
17 copies as we could.

18 **THE COURT:** Here. Take this one. Let's keep going.

19 Ms. Stone, you can give them mine? I will get one later.
20 Let him use that.

21 **MR. SRINIVASAN:** I apologize, Your Honor.

22 **THE COURT:** We have about 150 binders in here and not
23 a single copy, extra copy.

24 **MR. SRINIVASAN:** I apologize, Your Honor. I think we
25 won't be long with this document.

1 Q. Ms. Wright, have you seen this document before?

2 A. No. It's dated 2011. So 2011. Ten years ago.

3 Q. So that was before you took the role as -- as head of
4 Xbox; correct?

5 A. Yes.

6 Q. Do you see that the title of the document is "Xbox Live
7 Marketplace Future Strategy"?

8 A. I do, but, again, this is a ten-year-old document.

9 Q. I appreciate that. Thank you, ma'am.

10 A. Uh-huh.

11 Q. Let's turn to slide 18, and do you see there that the
12 slide 18 is titled, "On the whole, technology trends point
13 expanding options for delivery of high quality games."

14 A. Yes, I do.

15 Q. And do you see that in the various categories of games
16 that are listed there, listed even as early as 2011 is console
17 and PC games as one category; correct, ma'am?

18 A. That's correct.

19 Q. And then the next category there is mobile games?

20 A. That's correct.

21 Q. And then the next category is streaming games?

22 A. Correct.

23 Q. Let's move to page 32. And am I right in reading the
24 heading on page 32 is, "Over the next three years, mobile and
25 handhelds will lead the growth in gaming devices"?

1 **A.** That's what the headline says, yes.

2 **Q.** So would you agree with me that as early as ten years ago
3 Microsoft was viewing the mobile space as a potential
4 competitor in gaming?

5 **MR. EARNHARDT:** Object to the form of the question.

6 **THE COURT:** Overruled. If you know.

7 **THE WITNESS:** Well, it talks about handheld. A
8 switch can be a handheld as a gaming device. There is all
9 sorts of form factors. When it talks about mobile, yes, I
10 assume from this title it's saying that -- I'm reading it as
11 we go -- that there will be a growth in mobile and you can
12 play games on them, yes.

13 **BY MR. SRINIVASAN:**

14 **Q.** You agree with me Microsoft was looking at this as early
15 as ten years ago, looking at the mobile side of the gaming
16 business?

17 **A.** I agree with that, but to the point that you can play
18 games on mobile, right. That's -- it's --

19 **Q.** The question was, ma'am, was -- your testimony earlier
20 today is that Microsoft does not look at mobile in evaluating
21 competition in the games business. My question is simply to
22 you, do you agree with me that this slide references mobile as
23 a competitor in the gaming space?

24 **A.** My testimony was that people play on multiple devices,
25 right, mobile being one of them, the most prevalent device.

1 In any industry analysis, mobile would have to be part of the
2 consideration. So, yes, 10 years ago were we looking at
3 mobile market share, that is absolutely a fair statement.

4 **Q.** And you still are; right, ma'am?

5 **A.** Of course. And every industry report would.

6 **Q.** Let's look at one more slide, slide 37. Do you see in
7 slide 37 it has again the title, "The availability and
8 popularity of games on app stores is driving consumer wireless
9 game adoption"? Did I read that right?

10 **A.** You did read it right.

11 **Q.** Right. And there is some graphs and there is a little
12 Apple icon for one of the graphs and there is a Microsoft icon
13 right next to it, isn't there, ma'am?

14 **A.** I'm looking at this document at the same time. Yes. I
15 see that.

16 **Q.** This was ten years ago? Again, I hate to belabor it --

17 **A.** Yes.

18 **Q.** So Microsoft, as early as ten years ago, was in fact
19 looking at app stores on mobile devices as competition for the
20 games market?

21 **A.** We have games in the app store today. Of course we would
22 look at the app store. When I talk about competition, though,
23 it is not that either/or scenario. You're not playing one at
24 the expense of another.

25 **Q.** Okay. If we can then turn to another exhibit, and I

1 **BY MR. SRINIVASAN:**

2 **Q.** And, Ms. Wright, have you had a chance to look at 5532?

3 **A.** I have not.

4 **Q.** Okay. You have not?

5 **A.** I have not looked -- I mean, I'm -- I have not looked at
6 it.

7 **Q.** Do you recognize what it is?

8 **A.** It's a 10-K.

9 **Q.** For what year?

10 **A.** It looks like it is --

11 **Q.** Do you see at the top it says June 30, 2020?

12 **A.** Yes, I do.

13 **Q.** And do you recognize this as Microsoft Corporation's 10-K?

14 **A.** Yes, I do.

15 **Q.** From just about a year ago?

16 **A.** Yes, I do.

17 **Q.** And that's the company you work for?

18 **A.** That's correct.

19 **Q.** Can you turn to page 11 of this document, please, ma'am,
20 the bottom of 11. It's going to come up on the screen.

21 Hopefully we will blow it up.

22 Do you see the heading that says "Competition"?

23 **A.** Uh-huh, I do.

24 **THE COURT:** Yes?

25 **THE WITNESS:** Yes.

1 **BY MR. SRINIVASAN:**

2 **Q.** Let me read that and you can tell me if I do it correctly.

3 "Windows faces competition from various software products and
4 from alternative platforms and devices, mainly from Apple and
5 Google. We believe Windows competes effectively by giving
6 customers choice, value, flexibility, security, an easy-to-use
7 interface, and compatibility with a broad range of hardware
8 and software applications, including those that enable
9 productivity." Did I read that accurately?

10 **A.** Yes. This is not a gaming statement. This was a
11 Windows --

12 **Q.** That was not my question, ma'am. Did I read that
13 accurately?

14 **A.** I believe so.

15 **Q.** Do you agree with that statement?

16 **A.** Which statement?

17 **Q.** The one I just read.

18 **A.** Do I agree with it?

19 **Q.** Yes.

20 **A.** I don't -- sure. I mean, its --

21 **Q.** Okay.

22 **A.** Yes.

23 **Q.** Let's turn to page -- at the bottom, the number, and the
24 control number is 5532.012. I'm sorry. Point 011.

25 **A.** Okay.

1 **Q.** I'm sorry. It is 12. We were on 11. I apologize.

2 If I can direct you to the second paragraph there, and I'm
3 just going to read it, and you let me know if I read it
4 correctly. This is from the second paragraph of the 10-K on
5 page 12: Quote, "Xbox Live and our Cloud gaming services face
6 competition from various online gaming ecosystems and game
7 streaming services, including those operated by Amazon, Apple,
8 Facebook, Google, and Tencent. We also compete with other
9 providers of entertainment services such as Netflix and Hulu."

10 Do you -- did I read that correctly, ma'am?

11 **A.** You did.

12 **Q.** Do you disagree with that statement?

13 **A.** No, I don't disagree with it. No.

14 **Q.** Thank you, ma'am. Okay.

15 Just almost finished here.

16 **A.** The one thing I would like to make sure is understood, is
17 there is detail in this around game streaming services --

18 **THE COURT:** So, again, it's not the way this works.
19 You don't get to just talk. You have to answer his questions.

20 **THE WITNESS:** Okay.

21 **MR. SRINIVASAN:** Thank you, Your Honor.

22 **Q.** You are familiar with Minecraft, Ms. Wright?

23 **A.** I am.

24 **Q.** Minecraft is a Microsoft game; right?

25 **A.** Yes, it is.

1 **BY MR. EARNHARDT:**

2 **Q.** Without revealing the --

3 **THE COURT:** I'm not sealing the courtroom. If she
4 needs me to seal it to say something that she hasn't already
5 said in the public domain, then she can let me know.

6 **THE WITNESS:** Yes. My testimony is that it's the
7 70/30 share that you would imagine, and the 600- to \$700
8 million is not Microsoft's cut.

9 **BY MR. EARNHARDT:**

10 **Q.** There was questioning about the difference between what
11 Apple asked Microsoft to do with the native app of its xCloud
12 game service versus the way Microsoft designed it. Do you
13 remember that questioning?

14 **A.** I do.

15 **Q.** And you testified but weren't able to finish that what
16 Apple asked you to do would fundamentally break down the
17 product that you created? Do you remember that testimony?

18 **A.** I do.

19 **Q.** What did you mean by that?

20 **A.** That the core requirement to take every game and separate
21 it out into an individual app, the easiest equivalent is
22 asking Netflix to break out every single TV show or every
23 single movie and run them as a separate streaming app, and so
24 even if the other issues were able to be solved around our
25 ability to publish third-party content similar to the way

1 other streaming catalogs do, as well as the ability to stream
2 at all, both of those issues were solved. But the core issue
3 of needing to take and separate out every single game title
4 was untenable, and it would fundamentally break the service,
5 and, you know, it -- it just is not something we could
6 reasonably do.

7 **THE COURT:** I want to understand this. Netflix -- I
8 can use Netflix with a native app?

9 **THE WITNESS:** Correct.

10 **THE COURT:** And I can see lots of different movies?

11 **THE WITNESS:** Yeah.

12 **THE COURT:** Or TV shows or whatever?

13 **THE WITNESS:** That's right.

14 **THE COURT:** So is it that you didn't want to use a
15 subscription model because Netflix obviously is operating.
16 You just didn't want to use that model?

17 **THE WITNESS:** No. We wanted to use the Netflix
18 model, so we wanted to, just like Netflix, have a service
19 called Game Pass and have a collection, a subscription of
20 games, just like movies and TV shows would be in that service.
21 But the fundamental issue was the policy. It allows Netflix
22 to do what Netflix does, but it would not allow us to do what
23 Netflix does, and instead, it required making a separate
24 application for every game title that would have to be
25 individually downloaded and put onto your phone.

1 **THE COURT:** Okay. So you wanted to charge a
2 subscription service fee for the 3,000 titles you have or some
3 portion of that?

4 **THE WITNESS:** Really a curated set of a hundred-plus
5 titles.

6 **THE COURT:** And that's what was not allowed?

7 **THE WITNESS:** That's correct.

8 **THE COURT:** Okay. Thank you.

9 **BY MR. EARNHARDT:**

10 **Q.** To continue the analogy, what would Netflix have to do if
11 the policy that Apple applied to you were applied to it?

12 **A.** Netflix wouldn't exist today because they would
13 effectively not have a catalog of services that could be
14 delivered on mobile. Every game -- or every movie and every
15 TV show would be an individual application.

16 **Q.** There has been a lot of testimony that xCloud is now
17 available on iOS through Safari in beta; correct? Do you
18 remember that testimony generally?

19 **A.** Correct.

20 **Q.** To use that service, what platform or what mechanism would
21 a user have to go through to access xCloud?

22 **A.** You would have to go through a browser and you would
23 presumably go through the Safari browser. You would have to
24 go out to Xbox.com and you would have to decide to play the
25 games there over the internet.